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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

No. 23-CR-133-PA-1

14 Plaintiff,

GOVERNMENT'S SENTENCING POSITION
AND OBJECTIONS TO PRESENTENCE
INVESTIGATION REPORT; MEMORANDUM
OF POINTS AND AUTHORITIES; EXHIBIT

15 v.

16 MIGUEL ANGEL VEGA,

Hearing Date: December 11, 2023

17 Defendant.

Hearing Time: 8:30 a.m.

18 Location: Courtroom of the Hon.
Percy Anderson

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorneys J. Jamari Buxton and
22 Brian R. Faerstein, hereby files its sentencing memorandum and
23 objections to the Presentence Investigation Report for defendant
24 Miguel Angel Vega.

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This sentencing memorandum is based upon the attached memorandum of points and authorities and accompanying exhibit, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: November 20, 2023

Respectfully submitted,

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/s/
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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. DEFENDANT'S OFFENSE CONDUCT.....	4
III. THE ADVISORY GUIDELINES RANGE.....	7
A. USPO's Calculation and Recommendation.....	7
1. Offense Level.....	7
2. Criminal History Category.....	7
3. Advisory Guidelines Range.....	8
IV. THE GOVERNMENT'S SENTENCING RECOMMENDATION.....	8
A. The Nature and Circumstances of the Offense.....	8
B. History and Characteristics of Defendant.....	11
C. Deterrence.....	12
D. Need to Reflect Seriousness of Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense.....	13
E. Avoidance of Unwarranted Sentencing Disparities.....	13
F. Victim Impact.....	14
G. Restitution.....	15
H. Objections/Corrections to the PSR.....	15
V. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

Cases

Gall v. United States,

552 U.S. 38 (2007) 13

Molina-Martinez v. United States,

136 S. Ct. 1338 (2016) 13

United States v. Carty,

520 F.3d 984 (9th Cir. 2008) 8

United States v. Rita,

551 U.S. 338 (2007) 13

Statutes

18 U.S.C. § 16 16

18 U.S.C. § 371 16

18 U.S.C. § 3553 passim

18 U.S.C. § 3663 15, 16

18 U.S.C. § 3663A 15, 16

Other

U.S.S.G. § 2H1.1 7, 17

U.S.S.G. § 3C1.1 7

U.S.S.G. § 4C1.1 12, 17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Of all public officials, law enforcement officers have perhaps
4 the most concrete and pervasive impact on people's day-to-day lives.
5 They patrol our neighborhoods and cities; they respond to
6 emergencies; they investigate crimes; and they give people a sense of
7 security so that people can go about their lives with the knowledge
8 that law enforcement is safeguarding our society. Indeed, most
9 people see or come into contact with some type of law enforcement
10 officer virtually every week, if not every day. The omnipresence of
11 law enforcement is deliberate, seeking to foster a sense of security,
12 and in this way, law enforcement is one of the core components of our
13 government.

To discharge their critical duties to protect and serve the public, law enforcement officers are afforded immense powers and discretion. These include the power to deprive people of liberty, to seize property, and to initiate criminal charges against people when warranted. These powers come with great responsibility, and law enforcement officers who abuse them for personal gain, or to harm others, put both the public and our larger system of government at great risk. Because if people cannot have confidence in law enforcement -- if they do not believe officers abide by the law and discharge their duties with respect, restraint, and principle -- the public may just as soon lose faith in other (or all) institutions of government.

26 Defendant Miguel Angel Vega, a former Los Angeles County
27 Sheriff's Department ("LASD") deputy, is one of the small but
28 increasingly prevalent group of law enforcement officers who have

1 abused their powers to harm others. Enraged that a 23-year-old
2 skateboarder named J.A. implored him and his partner to stop
3 harassing two young African American males on April 13, 2020,
4 defendant (along with his partner and co-defendant Christopher Blair
5 Hernandez) exploited his authority as a deputy to terrorize and teach
6 J.A. a lesson. Defendant seized J.A. from a Compton skatepark
7 without any lawful basis, confined J.A. inside the deputies' patrol
8 vehicle, and, as they drove around, taunted and threatened to beat up
9 J.A. and to drop off J.A. in gang territory so that others could
10 assault J.A. Although this nightmarish episode out of a movie could
11 have ended there (albeit after defendant's initial abuse of power),
12 defendant proceeded to initiate a high-speed chase with J.A. trapped
13 (unbuckled no less) in the back of the patrol vehicle, which ended
14 soon after when defendant crashed the vehicle into a brick wall. As
15 a result, J.A.'s face struck the interior of the vehicle and J.A.
16 sustained a sizeable cut above J.A.'s eye requiring stitches.

17 Recognizing he had no legal justification to arrest J.A.,
18 defendant immediately released J.A. and directed him to "get the fuck
19 out" of the area, lest others discover what defendant had done. But
20 when responding LASD deputies unwittingly re-arrested J.A. a short
21 time later, defendant and his partner quickly pivoted, fabricating a
22 story designed to mask their unlawful conduct: namely, that the
23 deputies had arrested J.A. because J.A. exhibited symptoms of a
24 person under the influence of a stimulant, even though J.A., who does
25 not use drugs, showed no such signs and was completely sober. As
26 part of the ensuing cover-up, defendant and his partner lied to a
27 LASD supervisor to prevent a larger investigation, caused another
28

1 deputy to issue a sham citation to J.A. as J.A. was receiving
2 treatment at a hospital to repair J.A.'s face, and then drafted
3 multiple incident reports replete with lies, omissions, and
4 misstatements. In so doing, defendant eroded the public's trust in
5 law enforcement and in the larger government of which law enforcement
6 is an integral part.

7 Defendant has since pled guilty to depriving J.A.'s
8 constitutional rights under color of law and faces sentencing in
9 several weeks. The government agrees with the Guidelines
10 calculations applied by the United States Probation and Pretrial
11 Services Office (the "USPO") in its Presentence Investigation Report
12 (Dkt. No. 53 ["PSR"]), which finds that defendant has a total offense
13 level of 17 and a criminal history category of I, yielding an
14 advisory Guidelines range of 24-30 months in prison. (PSR ¶¶ 63, 68,
15 113.) Weighing the various aggravating and mitigating facts of this
16 case, and the broader goals of sentencing, the government
17 respectfully recommends the following sentence: (1) a 24-month term
18 of imprisonment; (2) a 3-year term of supervised release; (3) a fine
19 to be determined by the Court;¹ and (4) a special assessment of \$100.
20 As discussed in detail below, the government's recommended sentence
21 appropriately balances the sentencing factors articulated in Title
22 18, United States Code, Section 3553(a) and is sufficient but not
23 greater than necessary to comply with the purposes of sentencing.

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28 ¹ In the PSR, the USPO recommends a fine of \$10,000. (PSR
¶ 109.)

1 **II. DEFENDANT'S OFFENSE CONDUCT²**

2 Before he was fired for his unlawful conduct, defendant was a
 3 deputy with the LASD. Around 2:30 p.m. on April 13, 2020, defendant
 4 and his partner, co-defendant Hernandez, were patrolling the area
 5 near Wilson Park in Compton, not far from LASD's Compton Station, in
 6 their patrol SUV as part of their official duties. Near the border
 7 of the park, just outside an enclosed skatepark where J.A. was
 8 skateboarding with his friends, defendant and Hernandez spotted and
 9 approached two young African Americans males, directing them to lift
 10 their shirts.

11 From inside the skatepark, J.A. exercised his First Amendment
 12 rights by yelling at defendant and Hernandez to leave the African
 13 American males alone. Enraged and pumped-up on steroids, which made
 14 him "angry and short-tempered" (see PSR ¶ 97), defendant screamed at
 15 J.A. to "shut the fuck up" and challenged J.A. to a fight, even
 16 though J.A. -- like everyone else inside the enclosed skatepark
 17 -- was not threatening defendant and Hernandez and posed no risk
 18 whatsoever to them. After taking a moment to move the patrol vehicle
 19 closer to an opening in the skatepark fence, defendant, still
 20 enraged, summoned J.A. to the opening, grabbed J.A., and confined
 21 J.A. inside the patrol vehicle as Hernandez looked on, even though
 22 J.A. had not done anything wrong, much less committed a crime.
 23 Because there was no legal basis to seize and imprison J.A. --
 24 indeed, the goal was to teach J.A. an unnecessary and unwarranted

27 ² Unless otherwise indicated, all facts herein are drawn from
 28 the Factual Basis contained in the parties' plea agreement. (Dkt. No. 50 at 17-27.)

1 lesson -- defendant and Hernandez did not bother to handcuff J.A.,
2 advise J.A. of J.A.'s rights, or even secure J.A.'s seatbelt.

3 Mystified onlookers inside the skatepark began filming the
4 illegal imprisonment, prompting defendant to flee the area with J.A.
5 still trapped in the patrol vehicle. As defendant drove away,
6 defendant and Hernandez began to intimate and scare J.A. through
7 repeated taunts and threats. Among others, the deputies stated that
8 they were going to beat up J.A. and said that they would drop off
9 J.A. in gang territory so that others could attack J.A. as well.
10 Mindful that he and Hernandez were committing a crime by falsely
11 imprisoning J.A., defendant also began to concoct a pretextual story
12 -- which he signaled to Hernandez -- that the deputies had suspected
13 J.A. of being under the influence of a stimulant, justifying the
14 detention.

15 Soon after, defendant spotted and began chasing a young male on
16 a bicycle whom defendant claimed had a firearm, even though J.A. was
17 still unbuckled and confined in the back of the deputies' SUV. The
18 chase led defendant through an alley, where defendant slammed the SUV
19 into a brick wall and another parked vehicle while trying to pursue
20 the bicyclist at an unsafe speed. J.A. sustained a large cut above
21 J.A.'s eye during the collision, an injury for which J.A. would later
22 require stitches. But instead of checking to see whether J.A. needed
23 medical attention, defendant -- realizing the even greater magnitude
24 of trouble he was going to be in if the unlawful arrest were
25 discovered -- quickly elected to "kick" J.A., telling J.A. to "get
26 the fuck out" of the area. J.A. complied, eliminating -- at least
27 for the moment -- the key evidence of defendant and Hernandez's

1 crime. Fate stepped in, however, and soon after another LASD deputy
2 responding to the area to look for the purported gun suspect re-
3 arrested J.A. around the corner and down the block from the site of
4 the collision. Defendant learned of the (incorrect) arrest of a
5 potential gun suspect, saw that J.A. was the person in custody, and
6 tried to persuade his colleagues to kick J.A. again, to no avail.
7 When that did not work, defendant went back to his original plan,
8 which involved framing J.A. for a crime J.A. did not commit to cover-
9 up defendant and Hernandez's own unlawful conduct.

10 Specifically, defendant and Hernandez lied to a supervisor to
11 ward off a larger investigation into their actions, concealing that
12 they had arrested J.A. at the skatepark and that J.A. had been in the
13 back of the patrol SUV during the collision. Once these undeniable
14 facts became known, defendant lied again to the supervisor, stating
15 that he had arrested J.A. because J.A. was under the influence of a
16 stimulant. Fully on board with the cover-up, Hernandez took
17 defendant's lead and caused another deputy to issue J.A. a citation
18 at the hospital for being under the influence of methamphetamine.
19 Defendant and Hernandez then memorialized and solidified the false
20 story by drafting multiple incident reports filled with lies,
21 omissions, and misleading statements designed to justify their
22 misconduct. Defendant and Hernandez went into great detail in
23 fabricating their story. For instance, they wrote, falsely, that
24 before seizing and falsely imprisoning J.A. at the skatepark, the
25 deputies observed J.A. exhibiting signs of being under the influence
26 of a stimulant, such as profuse sweating, rapid speech, muttering
27 unknown words, erratic behavior, teeth grinding, heavy breathing, and

1 dilated pupils; that J.A. had threatened to harm them and others;
2 that onlookers at the skatepark moved toward their patrol SUV,
3 requiring the deputies to flee quickly without handcuffing J.A. or
4 securing J.A.'s seatbelt; and that, after the collision, defendant
5 checked J.A. for injuries and transferred J.A. to another patrol
6 unit. Defendant knew these were all lies, and he told them to
7 protect himself, all at the expense of J.A. and the integrity of his
8 position as a law enforcement officer sworn to protect the public.

9 **III. THE ADVISORY GUIDELINES RANGE**

10 **A. USPO's Calculation and Recommendation**

11 **1. Offense Level**

12 The USPO issued its PSR in November 2023. Consistent with the
13 parties' plea agreement (Dkt. No. 50 at 7), the USPO found in the PSR
14 that the following sentencing Guidelines factors apply:

15 Base offense level: 12 [U.S.S.G. § 2H1.1(a)(2)]

16 Defendant was a public +6 [U.S.S.G. § 2H1.1(b)(1)]
17 official at the time of the offense; offense was committed
18 under color of law:

19 Obstructing or impeding the +2 [U.S.S.G. § 3C1.1]
20 administration of justice:

21 Acceptance of responsibility: -3 [U.S.S.G. § 3E1.1]

22 **Total offense level:** 17

23 (PSR ¶¶ 45-63.)

24 **2. Criminal History Category**

25 The PSR indicates that defendant has no criminal history points,
26 yielding a score of zero and a criminal history category of I. (Id.
27 ¶¶ 65-68.)

3. Advisory Guidelines Range

Based on a total offense level of 17 and a criminal history category of I, the resulting advisory Guidelines range is 24-30 months. (*Id.* ¶ 113.) The government agrees with the USPO's calculation of defendant's Guidelines range. As explained below, the government recommends a sentence of 24 months' imprisonment, representing the low-end of that range.

IV. THE GOVERNMENT'S SENTENCING RECOMMENDATION

The government's recommended sentence of 24 months' imprisonment is sufficient, but not greater than necessary, to achieve the goals of sentencing. United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008). A 24-month term of imprisonment is a meaningful custodial sentence that accounts for the seriousness of defendant's crime, furthers the need for deterrence, promotes respect for the law, and provides just punishment; by the same token, it appropriately accounts for mitigating facts in defendant's personal history and characteristics and avoids unwarranted sentencing disparities. See 18 U.S.C. § 3553(a).

A. The Nature and Circumstances of the Offense

A powerful official sworn to protect and serve the public, defendant completely disregarded these duties and instead used his powers to intimidate, threaten, and punish a 23-year-old skateboarder who dared to question defendant's aggressive policing tactics. Rather than ignore J.A.'s comments -- or, better yet, leave the park altogether, because no crime had been committed by anyone -- defendant chose to take out his steroid-fueled rage on J.A. and teach J.A. a lesson that J.A. and others would not soon forget. Indeed, by

1 seizing and falsely imprisoning J.A. in the back of the patrol
2 vehicle, defendant was sending a message not just to the onlookers at
3 the park, but also to the larger community and anyone else who dared
4 to question law enforcement: speak too loudly and there will be
5 consequences.

6 But that was just the tip of the iceberg. Defendant taunted
7 J.A. for being (understandably) afraid and threatened to beat up J.A.
8 Defendant also threatened to drop off J.A. in gang territory, where
9 equally-if-not-even-more-menacing actors would brutalize J.A.
10 Perhaps defendant would have made good on his threats had he not then
11 spotted and, in yet another ill-advised decision, proceeded to chase
12 after a suspicious-looking (to defendant) bicyclist with J.A. still
13 trapped in the back of the patrol vehicle. That chase was short-
14 lived, ending in a violent crash in which J.A. sustained a large cut
15 above J.A.'s eye, adding injury to insult. Instead of checking to
16 see whether J.A. needed medical attention (J.A. did), defendant
17 immediately turned to self-preservation mode, directing J.A. to flee
18 the scene so that others would not discover his misconduct. Then,
19 when another deputy re-arrested J.A. soon after, and defendant
20 eventually learned of it, defendant put into action the fake story
21 that he first conceived in the patrol vehicle: falsely claiming that
22 J.A. had been under the influence of a stimulant.

23 This bald-faced lie became the centerpiece of the defendant and
24 his partner's cover up. Defendant told it to his supervisor to keep
25 himself and his partner out of trouble; it was the basis for a
26 citation another deputy issued to J.A. at the hospital where J.A. was
27 being treated for injuries caused by defendant; and it was featured
28

1 among a slew of other lies defendant and his partner manufactured and
2 presented as fact in two fabricated incident reports, including that
3 J.A. had threatened the deputies and others at the skatepark (J.A.
4 did not), and that the crowd of onlookers moved toward the patrol
5 vehicle as it drove away (they did not), justifying the deputies'
6 failure to secure J.A. in the vehicle before they left the park.

7 Defendant's above-described conduct falls into two distinct
8 categories, each of which is significant and erodes the public's
9 trust in law enforcement and in government more broadly. First,
10 defendant -- a sworn law enforcement officer -- deliberately broke
11 the law. Defendant seized and falsely imprisoned someone not because
12 they had committed a crime, but because he was angry and he wanted to
13 teach them a lesson. To carry out that lesson, defendant used
14 threats, intimidation, and fear. In so doing, defendant transformed
15 himself into a powerful (and armed) vigilante, something any
16 reasonable person should fear.

17 Second, defendant exploited his position to cover up a crime,
18 telling deliberate lies to protect himself and his partner and
19 incriminate an innocent person. This cuts to the very core of our
20 criminal justice system. For if the public cannot take its law
21 enforcement officers at their word, the system that relies on those
22 officers has no legitimacy whatsoever.

23 In short, the nature and circumstances of defendant's conduct
24 and his abuse of power are very grave considerations in this case and
25 warrant a within-Guidelines sentence.

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B. History and Characteristics of Defendant

While the nature and circumstances of the offense are clearly aggravating, the PSR also notes several mitigating facts in this case. See 18 U.S.C. § 3553(a)(1). On balance, these facts do not warrant any variance, but they do, in the government's view, support its recommended low-end Guidelines sentence of 24 months.

As a child, defendant's parents divorced, severing the family. (See PSR ¶ 76.) Defendant's mother and sister were eventually homeless, and his mother and aunt experienced traumatic personal issues that no doubt affected defendant for years to come. (See id. ¶ 77.) Despite these issues, defendant became a functional adult and pursued a career in law enforcement. But to compete with his peers, and have an "edge while on patrol," defendant began using steroids, which made him "angry and short tempered" and likely clouded his judgement (though did not excuse his conduct). (See id. ¶ 97.) It is no surprise that defendant committed the instance offense in the midst of his rampant steroid use.

Since his offense conduct, defendant has experienced both mental health and substance abuse issues, which he has sought to address. (See id. ¶¶ 92-96.) Even so, defendant has worked to better himself, obtaining his associate's degree in computer science, and he is currently working on a bachelor's degree in the same field, reportedly one year away from obtaining that degree. (See id. ¶¶ 99-100.) With these degrees, defendant apparently intends to pursue a career in coding or information technology, and he also appears to have the stability and support of his immediate and extended family.

1 (See id. ¶¶ 84, 86-87.)³

2 Based on these mitigating facts, the government recommends a
3 low-end sentence.

4 **C. Deterrence**

5 Perhaps more than most other crimes, there is a unique
6 opportunity for deterrence in this case. See 18 U.S.C.
7 § 3553(a)(2)(B). As discussed above, law enforcement officers wield
8 considerable power over people's lives and must excise that power --
9 whether it be arresting, charging, or imprisoning people or taking
10 their property -- responsibly, solemnly, and consistent with the law.
11 If left unchecked, other law enforcement officers might seek to use
12 their power, like defendant, to harm others or for personal gain. A
13 meaningful custodial sentence in this case will send a message that
14 there are serious consequences for this serious conduct. And because
15 the group of would-be wrongdoers -- i.e., law enforcement officers
16 who are entrusted with these immense powers -- is so specific, and
17 because these types of civil rights prosecutions are so rare, there
18 is little doubt the cohort group will receive that message. At the
19 same time, a meaningful custodial sentence will send a message to the
20 public that no one, including law enforcement officers, is above the
21 law, which might help to restore some of the faith in government that
22 defendant's conduct has eroded.

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25 ³ While defendant does not have any previous criminal history
26 points, that mitigating fact is already taken into account by virtue
27 of defendant's criminal history score. And as discussed below,
28 defendant does not qualify for the new two-level reduction for zero-
point offenders under U.S.S.G. § 4C1.1 because his crime is a civil
rights offense and because he used threats of force as part of the
offense.

D. Need to Reflect Seriousness of Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense

As explained above, defendant's conduct is serious and both harms the public and undermines our larger system of government. People who commit this offense must be punished commensurate with the seriousness of the crime and in a manner that encourages others -- i.e., fellow law enforcement officers -- to respect and comply with the law (their sworn duty). See 18 U.S.C. § 3553(a)(2)(A). A within-Guidelines sentence here would have the added sentencing benefit of promoting respect for the law amongst the public at large, advancing the paradigm that no one is above reproach. The 24-month term of imprisonment recommended by the government here accomplishes these goals.

E. Avoidance of Unwarranted Sentencing Disparities

A within-Guidelines sentence helps avoid unwarranted sentencing disparities among defendants with similar criminal backgrounds who commit similar offenses. See 18 U.S.C. § 3553(a)(6). The advisory Guidelines range provides the "starting point and . . . initial benchmark" for this Court's consideration of an appropriate sentence.

¹Molina-Martinez v. United States, 136 S.Ct. 1338, 1345 (2016).

(quoting Gall v. United States, 552 U.S. 38, 49 (2007)). Although the Guidelines are not binding, they “reflect a rough approximation of sentences that might achieve section 3553(a)’s objectives.”

United States v. Rita, 551 U.S. 338, 350 (2007). For this reason also, the government recommends a low-end sentence of 24 months.

F. Victim Impact

J.A.'s Victim Impact Statement, attached as Exhibit A, underscores the seriousness of defendant's conduct and echoes and personalizes many of the considerations above about how law enforcement misconduct profoundly harms individuals and undermines the public's belief in the larger institution.

J.A. says that the "catastrophe" J.A. experienced was something out of a movie. J.A. talks about the "trauma" he experienced as a result of defendant and his partner's actions, which robbed young J.A. of J.A.'s "motivation and spirit." After being falsely imprisoned by defendant, J.A. seemingly "lost [them]self" and a feeling of emptiness took over. Routinely experiencing sudden bouts of anger, J.A. stopped socializing with family and friends and would withdraw from the world so that J.A. could be alone to grapple with J.A.'s complicated feelings. J.A. also talks about struggling to understand why defendant and his partner did what they did to J.A. To this day, J.A. says that J.A. is "still working on getting comfortable being in public places."

19 J.A. says that J.A., a passionate skateboarder, grew up going to
20 the skatepark where J.A. was falsely imprisoned by defendant to get
21 away from trouble that lurked in that area. It was a refuge of sorts
22 where J.A. and others like J.A. built a peaceful and safe "community"
23 rooted in their common interests. That is no longer the case after
24 defendant's illegal conduct.

25 Speaking to the broader harm defendant's crime caused, J.A.
26 states as follows: "I don't stand here to hate those who protect
27 [and] serve our communities as they should. I stand here to say that

1 there are a lot of people like Hernandez [and] [defendant] . . .
2 [t]hat do not know how to de-escalate or show proper intentions in a
3 situation of despair." J.A. explains that law enforcement officers
4 like defendant should "[a]llways think twice before taking action to
5 do something [they will] end up regretting[,] [because] it is not
6 just a particular individual that [they are] hurting . . . [b]ut a
7 community that cares as well."

G. Restitution

9 Although restitution is not mandatory in this case because
10 defendant's offense of conviction did not constitute a crime of
11 violence, an offense against property, or another qualifying offense,
12 see 18 U.S.C. §§ 3663A(a) (1), (c), the government is mindful of the
13 Court's ability to make victims whole through restitution, see 18
14 U.S.C. § 3663, and that "the need to provide restitution to any
15 victims of the offense" is one of the goals of sentencing. See 18
16 U.S.C. § 3553(b) (7). Having said that, J.A. entered into a
17 confidential settlement agreement with the County of Los Angeles that
18 covered injuries and expenses sustained by J.A. by virtue of
19 defendant's conduct. To date, J.A. has not informed the government
20 of any additional uncovered expenses J.A. has incurred because of
21 defendant. Accordingly, the government is not aware of any
22 restitution in this case at this time.

H. Objections/Corrections to the PSR

24 As previously explained, the government agrees with the USPO's
25 advisory Guidelines calculations set forth in the PSR in this case.
26 Nonetheless, the government provides several corrections or
27 clarifications with respect to the PSR as follows:

- Paragraphs 8 through 10 list the counts that are to be dismissed at the conclusion of defendant's sentencing (assuming defendant complies with his obligations under the parties' plea agreement). However, paragraph 8 incorrectly lists Count 2 -- the count to which defendant pleaded guilty -- as being among the counts that the government will move to dismiss. Paragraph 8 instead should state: "Count 1 alleges a violation of 18 U.S.C. § 371: Conspiracy." In addition, paragraph 10 should refer to both Counts 4 and 5 (as opposed to just Count 4).
 - The PSR incorrectly states in paragraphs 41 and 125 that the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. § 3663A, applies to the offense of conviction in this case. As previously noted, none of the enumerated grounds or offenses for applying the MVRA are present in this case, see 18 U.S.C. §§ 3663A(a) (1), (c), including the ground of a crime of violence as defined in 18 U.S.C. § 16. Thus, the non-mandatory restitution provisions of 18 U.S.C. § 3663 apply here instead. In addition, the government previously provided the USPO with information about J.A.'s confidential settlement agreement with the County of Los Angeles that covered injuries and expenses sustained by J.A. by virtue of defendant's conduct, at least as of the time of the settlement.
 - The government agrees with the USPO that the Zero-Point Offender Reduction in the Guidelines does not apply to defendant. However, the government submits the principal

1 reason the reduction does not apply is because the instant
2 offense of conviction is covered by U.S.S.G. § 2H1.1
3 (Offenses Involving Individual Rights), as set forth in
4 U.S.S.G. § 4C1.1(8), in addition to defendant having used
5 credible threats of violence in connection with the
6 offense, U.S.S.G. § 4C1.1(3).

- 7 • With respect to the PSR's summary of "The Offense Conduct"
8 in paragraphs 14 through 40, the government respectfully
9 requests that the USPO incorporate the facts set forth in
10 the following paragraphs from defendant's Factual Basis in
11 the parties' plea agreement (see Dkt. No. 50 at Attachment
12 A): paragraph 10 (to replace paragraph 26 in the PSR);
13 paragraph 13; paragraph 16; and paragraph 19.
- 14 • With respect to paragraph 17 of the PSR's summary of "The
15 Offense Conduct," the third sentence should be revised to
16 state "one of whom **Vega** believed was associated with a
17 street gang" instead of "one of whom **Hernandez** believed was
18 on probation."

19 **V. CONCLUSION**

20 For the foregoing reasons, the government respectfully requests
21 that this Court impose the following sentence: (1) a 24-month term of
22 imprisonment; (2) a 3-year term of supervised release; (3) a fine to
23 be determined by the Court; and (4) a special assessment of \$100.